



March 23, 2012

Ex Parte Notice

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Connect America Fund, WC Docket No. 10-90; A National Broadband Plan for Our Future, GN Docket No. 09-51; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; High-Cost Universal Service Support, WC Docket No. 05-337; Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Lifeline and Link-Up, WC Docket No. 03-109; Universal Service Reform – Mobility Fund, WT Docket No. 10-208

Dear Ms. Dortch:

On Friday, March 23, 2012, the undersigned met on behalf of the National Telecommunications Cooperative Association (“NTCA”) with Carol Matthey, Deputy Chief of the Wireline Competition Bureau (the “Bureau”), to discuss ongoing reform efforts in the above-referenced proceedings.

Regression Analysis Caps. I highlighted that the current record identifies a series of problems with the proposed regression analysis-based approach to developing and implementing caps on capital investment and operating expenses supported through the federal universal service fund (“USF”), and urged action with respect to the following items in particular.

First, I emphasized the importance of ensuring predictability in connection with USF support, consistent with the Communications Act of 1934, as amended. The dynamic, year-by-year alteration of the caps as currently contemplated presents substantial challenges for all rural local exchange carriers (“RLECs”). Specifically, I stated that NTCA members have expressed a consistent fear that any given RLEC might be the “next one” to trigger the caps, and it should also be noted that lenders and investors have expressed deep confusion at attempting to forecast the effects of any caps because of their dynamic nature. Indeed, I explained that this unpredictability has led even those that appear unaffected by the caps at first – and even those individual RLECs that might be poised to receive some incremental support in the first year – to avoid much-needed broadband deployment or upgrades (including stimulus-related construction efforts) for fear of triggering the caps in subsequent years.

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Allowing such uncertainty to perpetuate and to potentially stymie the deployment of broadband would be contrary to the very purpose of the National Broadband Plan, the President's own stimulus initiatives, and the stated objectives of the Commission's reforms. Second, I highlighted several substantive concerns with respect to the regression analysis formulas and data used in the regression analysis. These concerns include, but are not limited to: (a) the inclusion of patently erroneous data (including, but not limited to, mapping information) in the models with no apparent means to fix those short of a direction for individual RLECs to submit burdensome waiver filings; (b) the use of multiple discrete cost categories to develop and apply the caps; (c) the inclusion of depreciation expense in operating expenses; (d) the use of gross investment as a proxy for capital expenses; and (e) the use of inappropriate and statistically irrelevant independent variables in the analysis. I urged the Bureau to review and address each such concern thoroughly prior to making any attempt to finalize and/or implement the caps. *See, e.g.,* Comments of NTCA, *et al.*, (filed Jan. 18, 2012), at 63-75 and Appendices D and E; Reply Comments of NTCA, *et al.*, (filed Feb. 18, 2012), at 24-28 and Appendix B; Comments of the Nebraska Rural Independent Companies (filed Jan. 18, 2012), at 9-50; Comments of the Rural Broadband Alliance (filed Feb. 17, 2012), at 2-23; Letter from Patrick Halley, Legal Counsel, Wireline Competition Bureau, to Marlene H. Dortch, Secretary (dated March 9, 2012), at Appendices B and C; *Ex Parte* Letter from Joshua Seidemann, Director – Policy, NTCA, to Marlene H. Dortch, Secretary (dated March 21, 2012).

Finally, I noted the alternative constraint submitted by NTCA and other rural associations last year for placing reasonable, transparent, locally-tailored, and prospective controls on the growth of USF by tying a schedule for future investment to replacement of depreciated plant. *See, e.g.,* Comments of NTCA, *et al.* (filed April 18, 2011), at Appendix A. If the Federal Communications Commission (the "Commission") and the Bureau will not adopt this alternative, it would be appropriate at a minimum to publish a revised proposal for the regression analysis-based caps and provide reasonable opportunity for further comment prior to adoption and implementation, with such proposals to include provisions to address the unpredictability of year-by-year changes to the caps and other issues as noted above.

Further Notice Concerns. I also conveyed concern with any further modifications to USF support and intercarrier compensation ("ICC") in the wake of the Commission's November 18, 2011 Order in the above-referenced proceedings. I noted that the "dust has not even started to settle" on the many support and revenue reductions adopted in that Order – including the regression analysis-based caps discussed above. I also highlighted that numerous questions surround ongoing implementation of the Order, and that both Bureau staff and the industry continue to grapple with these important implementation issues.

I expressed the view that the Commission, rural consumers, service providers, and lenders and investors would be far better served by first answering the many pending questions and then taking the time to implement and evaluate the impacts of the many changes just made, rather than racing forward with further steps such as: (i) re-prescribing the authorized interstate rate-of-return; (ii) extending the still-being-developed regression analysis-based caps to Interstate Common Line Support; (iii) reducing USF support in areas served by a purported “unsubsidized” competitor; or (iv) reducing any other ICC rate elements. Indeed, many lenders, investors, and service providers are still processing and attempting to evaluate the changes just adopted, even though it is not entirely possible to do so because some of the most significant changes remain subject to ongoing development by the Bureau. Racing forward to consider and adopt yet more changes when those reforms adopted last fall have yet to be implemented or even fully understood provides no predictability in universal service, runs contrary to the objectives of promoting broadband deployment, and only perpetuates regulatory uncertainty.

The Need for a True Connect America Fund. Finally, I emphasized the ultimate importance of a “Connect America Fund” (or “CAF”) that will enable RLECs to deploy and sustain broadband-capable networks. Detailed rules to implement such a plan are already in the record; this “RLEC Plan” would enable reasonable broadband deployment in rural areas while helping to ensure that USF growth would remain at historical, very modest levels (approximately 3% annually). Moreover, the RLEC Plan would solve two of the most vexing issues with respect to rural broadband deployment: (1) the need to ensure that consumers can migrate to standalone broadband services without being compelled to take legacy voice service as well; and (2) the need for middle mile support that will enable RLECs to provide reasonably comparable services at reasonably comparable rates. NTCA continues to urge the Commission to adopt the RLEC Plan as the CAF for RLECs or, at a minimum, to ensure that provisions are in place to provide incremental support for middle mile networks and standalone broadband, particularly since such measures appear likely to be a part of any CAF mechanism in areas served by price cap carriers.

Pursuant to Section 1.1206 of the Commission’s rules, a copy of this letter is being filed via ECFS with your office. If you have any questions, please do not hesitate to contact me at (703) 351-2016 or mromano@ntca.org.

Sincerely,

/s/ Michael R. Romano
Michael R. Romano
Senior Vice President - Policy

cc: Carol Matthey